

**SUPREME COURT OF THE UNITED STATES**

MAY 15 1943

CHARLES ELMORE COOPLEY  
CLERK

**OCTOBER TERM, 1942**

**No. 1028 64**

**SOFT-LITE LENS COMPANY, INC., NATHANIEL  
SINGER AND R. G. LANDIS,**

*Appellants,*

*vs.*

**THE UNITED STATES OF AMERICA.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.**

**STATEMENT AS TO JURISDICTION.**

**BETHUEL M. WEBSTER,**  
*Counsel for Appellants.*

**LEHRICH & LEHRICH,**  
*Of Counsel.*

# INDEX.

## SUBJECT INDEX.

	Page
Statement as to jurisdiction .....	1
Statutes involved .....	2
Statutory basis of jurisdiction .....	2
Date of decree and application for appeal .....	2
Questions involved .....	2
Substantial questions involved .....	2

## TABLE OF CASES CITED.

<i>Ethyl Gasoline Corp., et al. v. U. S.</i> , 309 U. S. 436 .....	2
<i>Interstate Circuit, Inc., et al. v. U. S.</i> , 306 U. S. 208 .....	2
<i>United States v. Colgate &amp; Co.</i> , 250 U. S. 300 .....	3
<i>United States v. Univis Lens Co., Inc., et al.</i> , 316 U. S. 241 .....	2

## STATUTES CITED.

Expediting Act of February 11, 1903, as amended, Section 2 (32 Stat. 823, 36 Stat. 1167, 15 U. S. C. 29) .....	2
Judicial Code, Section 238, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. 345) .....	2
Miller-Tydings Amendment to Section 1 of the Sherman Act (15 U. S. C. 1) .....	3
Sherman Antitrust Act of July 2, 1890, as amended, Sections 1, 3 and 4 (26 Stat. 209, 15 U. S. C. 1; 3 and 4) .....	1

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**Civil No. 10-393**

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UNITED STATES OF AMERICA,

*against*

*Plaintiff,*

BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT  
EISENHART, BEN A. RAMAKER, JOSEPH F. TAY-  
LOR, SOFT-LITE LENS COMPANY, INC., NA-  
THANIEL SINGER, R. G. LANDIS AND MORRIS  
SINGER,

*Defendants.*

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**STATEMENT ON BEHALF OF DEFENDANTS-  
APPELLANTS SOFT-LITE LENS COMPANY, INC.,  
NATHANIEL SINGER, AND R. G. LANDIS PAR-  
TICULARLY DISCLOSING THE BASIS UPON  
WHICH IT IS CONTENDED THE SUPREME COURT  
HAS JURISDICTION UPON APPEAL TO REVIEW  
THE FINAL DECREE OF THE DISTRICT COURT.**

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1. This is an appeal from a final decree of the District Court of the United States for the Southern District of New York entered February 1, 1943 in a suit brought by the United States under Section 4 of the Sherman Antitrust Act of July 2, 1890 as amended (26 Stat. 209, 15 U. S. C. § 4) enjoining said defendants-appellants from executing or continuing certain agreements and practices thought by the Court to be in restraint of trade in violation of Sections 1 and 3 of that Act (26 Stat. 209, 15 U. S. C. §§ 1, 3).

2. The statutory jurisdiction of the Supreme Court of the United States to review the decree of the District Court upon direct appeal is conferred by Section 2 of the Expediting Act of February 11, 1903 as amended (32 Stat. 823, 36 Stat. 1167, 15 U. S. C. § 29) and Section 238 of the Judicial Code as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. § 345). Among the more recent decisions sustaining the jurisdiction of the Supreme Court under the same circumstances are *United States v. Univis Lens Co., Inc. et al.*, 316 U. S. 241 (1942); *Ethyl Gasoline Corporation et al. v. United States*, 309 U. S. 436 (1940); *Interstate Circuit, Inc. et al. v. United States*, 306 U. S. 208 (1939).

3. The final decree of the District Court sought to be reviewed was entered February 1, 1943. A petition for appeal to the District Court is presented herewith, April 1, 1943.

4. On April 1, 1943 the plaintiff United States of America served on said defendants-appellants copies of its petition for appeal, statement under Rule 12, paragraph 3, of the Rules of the Supreme Court, order allowing appeal, citation, assignment of errors and prayer for reversal, and praecipe, all dated April 1, 1943, and statement as to jurisdiction dated March 31, 1943, together with the opinion of the District Court dated May 27, 1942.

5. That the questions involved are substantial is indicated by the evidence and decisions discussed in the plaintiff-appellant's said statement as to jurisdiction dated March 31, 1943 submitted in compliance with Rule 12, paragraph 3, of the Rules of the Supreme Court. Without accepting the plaintiff-appellant's statement as accurate or complete, the statement is sufficient to demonstrate that there are questions of substance to be determined on the appeal, including, for example, (a) the legality of the defendants-appellants' relations, contractual and otherwise, with wholesalers

and retailers, and (b) the effect and validity of the defendants-appellants' fair trade contracts.

Questions of substance are raised by the holding of the District Court that the defendants-appellants' distribution system (a) constituted an agreement with wholesalers to charge uniform prices to retailers and to boycott retailers not approved by the defendants-appellants, (b) constituted an agreement with retailers to charge arbitrary and non-competitive prices to the public, and (c) constituted an agreement among wholesalers through the defendants-appellants and an agreement among retailers through the defendants-appellants to charge non-competitive prices, and by the holding that the fair trade contracts of the defendants-appellants were part of an unlawful distribution system and were the result of a horizontal conspiracy among the wholesalers and therefore were unlawful.

The decision of the District Court is contrary to the decision of the Supreme Court in *United States v. Colgate & Company*, 250 U. S. 300 (1919). It is inconsistent with the Miller-Tydings Amendment to Section 1 of the Sherman Act (15 U. S. C. § 1).

6. The appeal involves a substantial question as to the defendants-appellants' rights guaranteed by the Fourth Amendment to be secure against unreasonable searches and seizures, in that paragraph 9 of the final decree provides:

"That for the purpose of securing compliance with this Judgment, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the said defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the said defendants, or any of them, relating to any of the matters contained in this Judgment, such access to be subject to any legally recognized

privilege. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the said defendants, shall be permitted to interview officers or employees of said defendants without interference, restraint or limitation by said defendants; provided, however, that any such officer or employee may have counsel present at such interview. Said defendants, upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this Judgment as from time to time may be necessary for the purpose of enforcement of this Judgment; provided, however, that the information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law."

7. A copy of the opinion of the District Court dated May 27, 1942 is appended hereto.\*

On the grounds stated herein it is respectfully submitted that the Supreme Court has jurisdiction.

Dated, April 1, 1943.

LEHRICH AND LEHRICH,  
*Attorneys for the Defendants-  
Appellants Above-Named;*

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*New York, N. Y.*

\*(Clerk's Note.—The opinion of the District Court is printed as an appendix to the Statement as to Jurisdiction in the case of *The United States of America v. Bausch & Lomb Optical Co., et al.*, No. 1021, October Term, 1942, and is not repeated here.)